

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

August 29, 2003

GSBCA 16066-RELO

In the Matter of KELLIS L. NOBLES

Kellis L. Nobles, Wiesbaden, Germany, Claimant.

Cynthia R. Blevins, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

HYATT, Board Judge.

Claimant, Kellis L. Nobles, a civilian employee of the United States Army Corps of Engineers, was relocated from Japan to Wiesbaden, Germany, in March 2002. In connection with this relocation, he was authorized to ship, via Government bill of lading (GBL), 18,000 pounds of household goods (HHG), including air shipment of 350 pounds of unaccompanied baggage for each adult and dependent twelve years of age or older, and 175 pounds for each dependent under the age of twelve.

Claimant was accompanied by his spouse and thirteen-year-old son, entitling him to 1000 pounds of unaccompanied baggage to be shipped, at Government expense, by air from Japan to Germany.¹ In making the move, claimant and his family air-shipped more than 1000 pounds of unaccompanied baggage.²

After completing an audit of his travel voucher, the Corps' Finance Center in Tennessee initially informed claimant that he owed the Government \$2144.06 based on the excess weight of the unaccompanied baggage he had shipped by air. This was calculated using the actual air rate of \$298.20 per hundred pounds shipped and using the net weight of the shipment. At claimant's request, this assessment was reviewed by the European Transportation Office. A representative of this office recommended that the excess billing

¹ Under the Joint Travel Regulations (JTR), the provision that each adult and dependent is entitled to shipment of a specified weight of unaccompanied baggage is qualified by a further provision that the total amount of unaccompanied baggage is limited to 1000 pounds. JTR C8020-B, -D.1.a.

² Mr. Nobles also shipped 2515 pounds of HHG from Japan and 1040 pounds of stored HHG from the United States to Germany by surface (non-air) transportation.

cost be computed based on the difference between the actual air rate (\$298.20 per hundred pounds) and the actual surface rate (\$120.02 per hundred pounds), or a rate of \$178.18, which results in an excess unaccompanied baggage cost of \$1281.11 (based on 719 net pounds).

Thereafter, Mr. Nobles received a second bill from the Corps' Finance Center, seeking repayment of an additional \$1103.34. This was accompanied with the explanation that the first bill was erroneously calculated upon the net, rather than the gross, weight of the air shipment. The Corps actually paid the shipper for transporting 2089 pounds of unaccompanied baggage.³

The Corps' Finance Center continues to maintain that claimant must repay the Government a total of \$3247.40. Claimant has requested the Board's review of this decision, urging that he should not be required to repay any of the amount assessed by the Corps. In the alternative, claimant challenges the methodology used by the Corps to calculate the amount he owes.

Discussion

Claimant contends first that since the actual total cost of his combined shipments of HHG (\$8144.56) amounted to far less than the amount authorized in his travel orders (\$23,385.40), he should not be required to pay any of the amounts billed to him by the Finance Center. He suggests that repayment of the charges for excess weight shipped by air should either not be required or should be waived.⁴ As to the first point, we note that the Government's authority is to pay the actual costs of shipping household goods by the authorized method up to a maximum of 18,000 pounds, including unaccompanied baggage, if any. JTR C8000. As discussed in more detail below, the regulations do not contemplate allowing use of a more expensive means of transport at the expense of the Government simply because the total amount of HHG to be moved is less than the maximum authorized. Thus, the Corps has properly determined that under the applicable regulation, Mr. Nobles should reimburse the agency for any unauthorized additional expense attributable to the shipment of unaccompanied baggage in excess of 1000 pounds.

To the extent Mr. Nobles believes repayment should be waived under the circumstances, this is a prerogative that rests solely with the agency. Under applicable law, the Corps may consider exercising the authority it has to waive repayment of this cost if it concludes that collection would be "against equity and good conscience and not in the best interests of the United States" and if there is no indication of "fraud, misrepresentation, fault, or lack of good faith" on the part of the person whose debt is requested to be waived. 5 U.S.C. § 5584(a)(2)(A) (2000); See, e.g., Marlene J. Walters, GSBGA 15875-RELO, 03-1

³ The total cost of the air shipment was \$6306.78.

⁴ In support of this contention Mr. Nobles explains that he did not intentionally exceed the 1000 pound maximum for unaccompanied baggage. Rather, he mistakenly relied on his packers to help keep the weight of the unaccompanied air shipment within the 1000 pound limitation.

BCA ¶ 32,124 (2002); Brian Johnson, GSBCA 15316-RELO, 01-1 BCA ¶ 31,337; Gerald A. Sherman, GSBCA 13791-TRAV, 97-2 BCA ¶ 29,299. The exercise of this authority is committed entirely to the discretion of the agency, however, and is not within the purview of this Board's review function. Thus, Mr. Nobles must direct this request to the Corps.

Mr. Nobles has also questioned the methodology used to calculate the amount he must repay. His first objection to the approach taken by the Finance Center is based on his reading of an internal Army regulation relating to the determination of excess costs in shipping of HHG. Department of the Army Regulation (AR) 55-71, paragraph 8-6(b) contains a note that provides the following guidance for Travel Offices (TO's):⁵

When a member's shipment exceeds authorized distance or weight and the mode of shipment directed to be used for operational purposes is not the lowest cost mode of service, the TO's estimate of transportation charges that the member owes for excess is to be computed using the rate of the lowest cost mode rather than the rate of the higher cost directed mode.

Paragraph 8-3 of this regulation suggests that for civilian employees the procedures applicable to excess costs on HHG shipments overseas are governed by the JTR. Since the note relied on by claimant refers to a "member's shipment," it does not appear that the regulation is intended to apply to civilian employees. Even if it does, however, by its language the regulation only applies when the Army has directed shipment by a means more expensive than the lowest cost method and then seeks to recover from the transferee the costs attributable to weight in excess of the amount authorized to be shipped. That is not what occurred here. The Army did not direct Mr. Nobles to move the extra weight at issue here

⁵ The preface to the regulation states its purpose as follows:

This revision incorporates Army policy on shipments after use of Joint Travel Regulations (JTR) weight allowance; use of orders in combination; shipments for military members with a homebase or advanced assignment; shipments of household goods to Alaska, Hawaii, Puerto Rico, or a US Territory or possession when a military member is assigned to a restricted area outside the continental United States (CONUS); and shipment of unaccompanied baggage within CONUS. It provides guidance on the account properly chargeable when an Army member is assigned to Government quarters administered by another Service. It delegates to major Army commands authority to extend travel and transportation entitlements in cases where a member has died while on active duty. It includes charges on accompanied baggage allowances. It updates appendix B, incorporating changes in weight allowances to oversea areas listed therein.

The regulation was effective September 15, 1984.

by air. It simply authorized him to ship up to 1000 pounds of unaccompanied baggage by air if he chose to do so.

Although the regulation cited by Mr. Nobles does not apply, his challenge to the methodology used by the Corps' Finance Center to calculate the amount he should repay is appropriate for another reason. The proper approach was the one advocated by the European Transportation Office, which concluded that the cost attributable to shipping excess weight by air should be computed by using the difference between the actual air rate (\$298.20 per hundred pounds) and the actual surface rate (\$120.02 per hundred pounds), which is \$178.18 per hundred pounds. Claimant's repayment obligation should be derived by multiplying the excess net weight by that amount.

The Board and the Comptroller General, the Board's predecessor in settling claims involving relocation of federal civilian employees, have consistently held that the cost of additional shipments of HHG, including unaccompanied baggage, may be paid by the Government up to the cost of moving the employee's HHG in one lot, at a maximum net weight of 18,000 pounds, in the most economical way. See David A. Dunlap, GSBCA 15764-RELO, 03-1 BCA ¶ 32,120 (2002). When unaccompanied baggage has been properly authorized, as it was here, the Government should pay for the cost of shipping the authorized amount of unaccompanied baggage by air, plus the cost that would have been incurred to include the excess baggage along with the HHG that was shipped by the most economical route -- here, by surface transportation. The employee is liable for the difference. William J. Feaser, B-189968 (Mar. 31, 1978); Paul C. Salute, B-187020 (Jan. 24, 1977). Thus, in this instance, the Corps is responsible for the cost of shipping 1000 pounds of HHG as unaccompanied baggage and the constructive cost of shipping the excess pounds as HHG at the surface rate from Japan to Germany. Mr. Nobles is responsible for the remainder. This is the approach adopted by the European Transportation Office.

Finally, Mr. Nobles challenges the Corps' determination that his liability for excess weight should be calculated based on the gross, rather than the net, weight of the air shipment. The statute and implementing regulations governing shipment of household goods authorize shipment of 18,000 pounds net weight of HHG when an employee relocates in the interest of the Government. Richard D. Grulich, GSBCA 15800-RELO, 02-2 BCA ¶ 31,891; Robert J. Land, GSBCA 15367-RELO, 01-2 BCA ¶ 31,455. Based on the record before us, the Corps initially determined a net excess weight of some 719 pounds. Subsequently, the Corps adjusted the bill, informing Mr. Nobles that it should have billed him on the basis of the gross weight in excess of 1000 pounds. The only document included in the record is a bill from the air shipper to the Corps for shipment of "2089#." This document does not state whether the weight is net or gross. There is no way to determine from the record what the net weight of the shipment was.⁶ The Corps has not offered any further explanation of its position. If the additional charge is indeed based on the gross, rather than on the net, weight of the unaccompanied baggage, then Mr. Nobles is correct in his contention that he should not be required to pay this additional amount.

⁶ The allowances for shipments of both HHG and unaccompanied baggage are based on net weights. JTR C2304, C8100.

Decision

Claimant's liability for the cost of shipping unaccompanied baggage in excess of 1000 pounds should be computed by using the adjusted rate of \$178.18 per hundred pounds. The

net amount of excess weight should be determined in accordance with the JTR. Whether repayment should be waived is a matter within the discretion of the agency.

CATHERINE B. HYATT
Board Judge